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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/620,117

07/15/2003

Robert A. Matousek

12618

8636

26637

7590

05/25/2006

CNH AMERICA LLC  
INTELLECTUAL PROPERTY LAW DEPARTMENT  
700 STATE STREET  
RACINE, WI 53404

EXAMINER

ADAMS, GREGORY W

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/620,117	Applicant(s) MATOUSEK ET AL.	
	Examiner Gregory W. Adams	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-8 and 10-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 8 and 10-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4, 7-8 & 10-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 4: "or the like" phrasing renders the claim indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d). Delete this phrase.

Claim 1, line 5: It is suggested that "longitudinal axis;" be rewritten as – longitudinal axis parallel with a combine direction of travel;-- as it is not clear which direction a longitudinal axis extends in.

Claim 1, line 12: "at least a portion" should be rewritten as –at least a first portion— else there is a lack of antecedent basis in claim 11.

Claim 1, line 14: rewrite "axis of the combine;" as –axis of the combine and the horizontal conduit extends along the longitudinal axis;-- else it is not clear where or how the storage position is located.

Claim 4, line 4: delete "or the like" because this phrase is indefinite.

Claim 4, lines 11-12: delete "for pivoting movement about said horizontal pivot axis". This is redundant.

Claim 4, lines 13-15: it is suggested that Applicant rewrite “pivoting of at least a portion of the vertical conduit about a horizontal pivot axis” as –pivoting of said upper portion of the vertical conduit for pivoting about a horizontal pivot axis— else there is a lack of antecedent basis because its not clear what “portion” is referring to.

Claim 8, lines 15-16: it is suggested that Applicant delete “said unloading conduit including a horizontal conduit which is retractable into an inoperative, store position” because this is redundant; “rested on a left or right side” is rewritten as –and said horizontal conduit is rested on a left or right side— for clarification.

Claim 11, line 2: “a first portion” in line 2 lacks antecedent basis as its unclear if this is referring to a rotational portion or sideways pivoting portion. Suggest rewriting “coupling a first portion” as –coupling the first portion--.

Claim 12, lines 1-3: “said unloading conduit including a horizontal conduit which is retractable into an inoperative, stored position rested on a shelf” should be rewritten as –said horizontal conduit is retractable into an inoperative, stored position and rested on a shelf— to make clear that the horizontal conduit is rested on a shelf.

Claim 16, lines 1-2: “a first portion” lacks antecedent basis. There is no first portion in claims 15 and 4. Suggest rewriting “coupling a first portion of the vertical conduit to a remaining portion” as –coupling the upper section of the vertical conduit to the intermediate section--.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 11-14, & 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Behnke et al. (US 2002/0083695).

With respect to claims 1-3, 11-14, & 18 Behnke et al. discloses an unloading conduit comprising a vertical conduit 3 having a vertical axis 10 and a horizontal axis 15 at a hinge joint and a horizontal conduit 3. Behnke's vertical axis and horizontal axis are permit "retracting of said horizontal conduit into a storage position" where a storage position is defined as any position that a user stops said unloading process. It is noted that although Behnke does not disclose a grain tank a grain tank does not affect the function of an unloading conduit and is subsequently afforded no patentable weight.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Behnke et al. (US 2002/0083695) in view of Pakosh (US 4,907,402) (previously cited). With respect to claim 10, Behnke et al. discloses a conduit 6 having a vertical axis and a horizontal axis and a horizontal conduit, and does not disclose an auger. Pakosh discloses that it is well known in the art to use grain augers within an unloading conduit assembly. Therefore, it would have been obvious to one having ordinary skill in the art

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at the time the invention was made to modify Behnke's unloading conduit assembly to include an auger, as per the teachings of Pakosh, as is customer within the art.

### ***Response to Arguments***

Applicant's arguments filed April 20, 2006 have been fully considered but they are not persuasive. With respect to FIG. 2, Behnke's horizontal axis 15 is parallel with a combine horizontal axis. It is noted that Applicant only recites a combine having a longitudinal axis. A body has an infinite number of longitudinal axis. Thus, in storage position Behnke's horizontal axis may be perpendicular to a combine direction of travel, but Applicant has not defined a combine longitudinal axis relative to a reference point. It would make more sense to recite a combine longitudinal axis parallel with a combine direction of travel.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th., 8:00-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GWA

*Donald W. Underwood* 05/24/06  
**DONALD W. UNDERWOOD**  
**PRIMARY EXAMINER**